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International Court of Justice

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Official transcript of the International Military Tribunal in the matter of The United States of America, the French Republic, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics against Hermann Wilhelm Goering et al, Defendants, sitting at Nurnberg, Germany, on 23 February 1946, 1000-1300, Lord Justice Lawrence presiding.

THE PRESIDENT: Before we deal with the applications, I am going to read the Tribunal's Order upon Dr. Stahmer's motion of 4 February 1946 and the Prosecution's motion of the 11th of February 1946. This is the Order:

The Tribunal makes no order with regard to paragraphs 2 to 5 of the Prosecution's motion as to the evidence of the Defendant, dated the 11th of February 1946.

With regard to paragraphs 2 and 7 of Dr. Stahmer's memorandum on the procedure, dated the 4th of February, 1946, the Tribunal makes the following Order:

1. The Defendants' cases will be heard in the order in which the Defendants' names appear in the Indictment.

2. (a) During the presentation of a Defendant's case, Defendant's Counsel will read documents, will question witnesses, and will make such brief comments on the evidence as are necessary to insure a proper understanding of it.

(b) The Defendant's Counsel may be assisted in the courtroom by his associate counsel or by another Defendant's counsel. Such other counsel may help the Defendant's counsel in handling documents, etc., but shall not address the Tribunal or examine witnesses.

3. Documentary Evidence. (a) Defendants' Counsel will hand to the General Secretary the original of any document which he offers in evidence if the original is in his possession. If the original is in the possession of the Prosecution Counsel will request the Prosecution to make the original of the document available for introduction into evidence. If the Prosecution declines to make the original available, the matter shall be referred to the Tribunal.

(b) Should the original of any such document be in the possession of the Tribunal, Defendants' Counsel will hand to the General Secretary a copy of the whole or relevant part of such document, together with a

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statement of the document number and the date upon which it was received in evidence.

(c) Should counsel wish to offer in evidence a document, the original of which is not in his possession or otherwise available to the Tribunal, he will hand to the General Secretary a copy of the whole or relevant part of such document, together with an explanation as to where and in whose possession the original is located and the reasonwhy it cannot be produced. Such copy shall be certified as being correct by an appropriate certificate.

4. Each Defendant's Counsel will compile copies of the documents or parts of documents whichhe intends to offer in evidence into a document book, and six copies of such document book will be submitted to the General Secretary two weeks, if possible, before the date on which the presentation of the Defendant's case is likely to begin. The General Secretary will arrange for thetranslation of the document book into the English, French, and Russian languages, and the Defendant's Counsel will be entitled to receive one copy of each of these translations.

5. (a) Defendants' Counsel will request the General Secretary to have the witnesses named by him and approved by the Tribunal available in Nurnberg, such request being made, if possible, at least three weeks before the date on which the presentation of a Defendant's case is likely to begin. The General Secretary will, as far as possible, have the witnesses brought to Nurnberg one week before this date.

(b) Defendants' Counsel will notify the General not later than noon on the day before he wishes to call each witness.

6.(a) A Defendant who does not wish to testify cannot be compelled to do so, but may be interrogated by the Tribunal at any time under Article 17B and 24F of the Charter.

(b) A Defendant can only testify once.

(c) A Defendant who wishes to testify on his own behalf shall do so during the presentation of his own defense. The right of Defense Counsel and of the Prosecution under Article 24G of the Charter, to interrogate and cross examine a Defendant who gives testimony, shall be exercised at that time.

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(d) A Defendant who does not wish to testify on his own behalf but who is willing to testify on behalf of a co-defendant may do so during the presentation of the case of the

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co-defendant. Counsel for other co-defendants and for the Prosecution shall examine and cross examine him when he has concluded his testimony on behalf of the co-defendant.

(e) Subparagraphs (a), (b), (c), and (d) do not limit the power of the Tribunal to allow a Defendant to be recalled for further testimony in exceptional cases, if in the opinion of the Tribunal the interest of justice so requires.

7. In addition to the addresses of each Defendant's Counsel under Article 24H, one counsel representing all the Defendant will be permitted to address the Tribunal on legal issues arising out of the Indictment and the Charter which are common to all Defendants, but im making such address he will be held to strict compliance with Article 3 of the Charter. This address will take place at the conclusion of the presentation of all the evidence on behalf of the Defendants, but must not last more than half a day. If possible, a copy of the written text of the address shall be delivered to the General Secretary in time to enable him to have translations made in the English, French, and Russian languages.

8. In exercising his right to make a statement to the Tribunal under Article 24J, a Defendant may not repeat matters which already have been the subject of evidence or have already been dealt with by his counsel when addressing the Court under Article 24H, but will be limited to dealing with such additional matters as he may consider necessary before the judgment of the Tribunal is delivered and sentence pronounced.

9. The procedure prescribed by this Order may be altered by the Tribunal at any time if it appears to the Tribunal necessary in the interest of justice.

Now the Tribunal will deal with the application for witnesses and documents on behalf of the Defendant Goering, and the procedure which the Tribunal proposes to adopt is to ask Counsel for the Defendant whose case is being dealt with to deal, in the first instance, with his first witness, and then to ask Counsel for the Prosecution to reply upon that witness. Then, when that has been done, to ask Defendant's Counsel to deal with his second

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application for a witness, and then for the Prosecution Counsel to deal with that witness; that is to say, to hear the Defendant's Counsel and the Prosecution Counsel upon each witness in turn.

That procedure will probably not be necessary when the Tribunal comes to deal with documents. Probably it will be more convenient for Defendant's Counsel to deal with the documents together and prosecuting counsel to deal in answer to the documents together. But, so far as the witnesses are concerned, each will be taken in turn.

I call upon Dr. Stahmer.

DR. HORN (Counsel for Defendant Ribbentrop): Before we go into detail, I ask to be informed why the Court has the intention to treat the Defense different that the Prosecution. In principle, Article 24 of the Charter says that the Tribunal may ask the Defense and the Prosecution what means of proof they will submit to the Tribunal. This decision has so far, from the part of the Tribunal, not been used with the Prosecution. Today the Defense has received the possibility to submit to the trial a list of

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documents and witnesses, which it was difficult so far to aquire.

I am prepared today to tell the Tribunal the essential points which make it necessary to call witnesses and present documents. I ask the Court, however, on the basis of past practice, not to ask the Prosecution to judge whether a document should be considered essential and relevant or not. As Defendant's Counsel I am convinced that that would mean a sort of pre-censorship by the Prosecution which would impair the presentation of my entire proof. I may, therefore, point out that currently the protests of the Defense have been rebuffed with the remark that the Defense at a later date would be heard about these points. If today, however, here, the pre-selection of proof, of evidence, on the basis of protests of the Prosecution will be made, that brings with it the danger that such protests which have not been accepted before could not be treated later.

Therefore, I would ask the court, according to the past practice, to proceed likewise, without giving the right to the Prosecution to protest about the admission of matter of proof.

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THE PRESIDENT: Will counsel for Ribbentrop come back to the rostrum?

The Tribunal is not altogether clear as to what motion you are manking.

DR. HORN: I make the motion that the prosecution whould not, at this stage of the trial, receive any possibility to decide about the calling of witnesses or the relevancy of documents.

Mr. President, I want to make it more precise. I want to say that as to the final decision, the prosecution right now should not have anything to say about the question of the admission or non-admission of a matter of proof.

THE PRESIDENT: The Tribunal considers that your motion cannot be granted, for this reason. It is true that the defense are being asked to apply for witnesses and documents now, in accordance with Article 24-D. One principal reason for that is that the Tribunal has got to bring all your witnesses here. The Tribunal has been, for many weeks, attempting to find your witnesses and to produce them here, and to produce the documents which you want. The relevance of those witnesses and of those documents has got to be decided by the Tribunal; but it is obvious that counsel for the prosecution must be allowed to argue upon the question of relevancy, just as counsel for the defendants have been allowed to argue upon the relevance of every witness and every document which has been introduced by the prosecution.

Exactly the same procedure is being adopted now for the defendants as has been adopted for the prosecution, with the sole exception that the defendants are being asked to make applications for the witnesses and documents to deal with the matter at one time, rather than to deal with it as each witness or document is produced. The reason for that is that the Tribunal, as I have stated, have got to find and bring the witnesses here for the defendants, and also to produce the documents.

Your motion was that the prosecution should not receive any possibility to decide on the calling of witnesses. The prosecution, of course, will not decide upon it; the Tribunal will decide upon it. The prosecution must have the right to argue upon it, to argue that the evidence of a certain witness is irrelevant or cumulative, and to argue that any document is not relevant.

And I am reminded that all of these documents have got to be translated for the purposes of the Tribunal.

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DR. HORN: Mr. President, many of the defendants' counsel, myself included, have, so far, not been able to question decisive witnesses for reasons of information. We know, therefore, that in decisive points we cannot even say what a witness will be able to proce.

If, now, we have to include the prosecution before we know definitely how far it is desirable to fight for a witness, we are in a much worse situation that the prosecution, which, after all, whenever the defendants' counsel made not protests, knew exactly for what the witness or the evidence was essential.

In this regard the defense is in a considerably worse situation, and I am of the opinion that this fact will become even worse if here, besides the Tribunal, the prosecution also, at this stage of the trial, can make protests against the material of evidence.

THE PRESIDENT: It is true that it is impossible to decide finally upon the admissibility of any piece of evidence until the actual question is asked; and for that reason the Tribunal has already, in deciding provisionally upon the application for witnesses, acted in the most liberal way. If it appears that there is any possible relevancy in the evidence to be given by a witness, they have allowed that witness to be alerted. Therefore, if there is any witness whose evidence appears to be, by any possibility, relevant, the Tribunal will allow that witness, subject, of course, to the directions of the Charter to hold the trial expeditiously.

Subject to those limitations, the Tribunal will allow any witness to be called whose evidence appears to be possibly relevant. That is all the Tribunal can do because, as I have already stated, it is the Tribunal who has to undertake the difficult task of securing these witnesses for the defendants, who can't secure them themselves.

DR. HORN: Thank you, sir.

THE PRESIDENT: Now, Dr. Stahmer.

DR. STAHMER: Mr. President, I would not like to repeat, but I believe that the objection of Dr. Horn has not been understood.

Dr. Horn wanted only to complain about the fact that the defense in no case has been asked previously whether a matter of proof that the prosecution has presented was a relevant or not, but we have always been surprised when a

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witness was brought in and we had no possibility to say anything or make any factual objections.

In so far as the objections against documents were concerned -- that is, considering their relevance -- the defense has always been told that for such an objection the time had not yet come for the defense.

THE PRESIDENT: I beg your pardon, Dr. Stahmer, but you misunderstood. The defense have never been told that objections to the admissibility of documents could be left over until later. Every objection to the admissibility of a document has been dealt with at the time. Observations upon the weight of the document are to be dealt with now, during the course of the defense. I don't mean today, but during the course of the defense.

There is a fundamental distinction between the admissibility of a document and the weight of a document, and all questions of admissibility have been dealt with.

DR. STAHMER: Mr. President, I understand that distinction. I only wanted to say that the objections against admissibility were not admitted -- I didn't want to say that, but rather the question of objection against the relevancy.

THE PRESIDENT: Objections to the relevancy of documents -- that is to say, their admissibility -- that is the governing consideration under this Charter as to the admissibility of documents. If they are relevant, they are admissible. That is what the Charter says. And any objection which has been made to documents or to evidence by defendants' counsel has been heard by the Tribunal and has been decided at the time.

Dr. Stahmer, the Tribunal wishes me to point out to defendants' counsel that they have had long notice of

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this form of procedure, long notice that under Article 24-D they were going to be called upon to specify or name their witnesses and the documents which they wish to produce, and to state what the relevance of the witnesses and the documents would be.

It seems obvious to the Tribunal that this procedure is really necessary when one remembers that it is, for the Tribunal, a very great difficulty and considerable expense to find these witnesses and to bring them to Nurnberg; and to find the documents, if possible, and to bring them to Nurnberg.

Now , as to Dr. Horn's objections to the procedure which has been adopted with reference to the prosecution, it is open to defendant's counsel at any time, if they wish to do so, to apply to strike from the record any document which they think ought not to have been admitted. One of his objections, or possibly your objection, appears to be that defendant's counsel have not had sufficient time to consider whether a particular document or a particular witness was relevant, and therefore admissible. You have had ample time to consider the point and if now you wish to apply to strike out any document or to strike out any evidence, you will make that application in writing and the Tribunal will consider it.

As I have said, the object of the procedure is to help the defendant's and their counsel. And it is a necessary procedure because the defendant's are unable, naturally, and defendant's counsel are unable, naturally, to procure the attendance of witnesses here in Nurnberg, and in some cases to procure the production of documents.

In order that we should do so, on their behalf, it is necessary that we should know whom they want to have produced here, what documents they want to have produced here; and, in order that time should not be wasted and money should not be unduly wasted, it is necessary to know whether the witnesses and the documents have any shadow of relevancy to the issues raised.

DR. STAHMER: I will begin the naming of the witnesses with the naming of the witness whose testimoney before this Court I consider necessary.

I name first General of the Air Force, Karl Bodenshatz.

THE PRESIDENT: The Tribunal does not desire you to read your application If you will just say in your own words, as shortly as you can, why you want the particular witness, they will then consider it. And if counsel for the

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prosecution wish to object, they will do so. Then the Tribunal will finally decide the matter.

DR. STAHMER: Yes,sir, I understand.

The witness which I have named, General of the Air Force, Bo[illegible]nschatz, who is here in N urnberg in the prison, has been, since 1933, first an adjutant and later a Minister; that is, Chief of the Ministeria l Office of Goering. He was together with Goering and, therefore, he is informed about all essentiall facts of that time.

I would like to have him as a witness for a number of facts which, in detail, are in my written statement, but especially that he took part in a conference which took place at the begginning of August 1939, at which Goering was present, together with British members of Parliament. Among them they discussed the possibility of a peaceful solution of the, at that time, already existing difficulties between Germany and Poland. At that time he had mentioned to the British members of Parliament that in no case would it come to a war, and that they should try to see to it th t these difficulties could be stra ightened out peacefully.

Furthermore, there are statements by Goering which he has mad during the years, particularly 1936 to 1939, from which statements the intention can be seen of the defendant Goering to avoid a war if possible, and he thought that the policy of the Reich should be that under no conditions should it come to a war.

This witness, furthermore, knows about the attitude of Goering when he, for the first time, heard from Hitler that Hitler had the intentions of going against Russia, of attacking Russia.

Finally he is also informed about the social attitude of Goering, whom he had an opportunity to know very well, particularly after 1939.

Those are generally the facts about which Bodenschatz will be heard here as witness.

SIR DAVID MAXWELL-FYFE: May it please the Tribunal, may I say one general word about the procedure of the prosecution?

My colleagues in all the delegations have asked me to deal primarily with these particular applications. There will be some of them, if the Tribunal pleases, on which certain of my colleagues would like to add a word as they have special intrests in them. But in general, and on the whole I shall deal with the application for the prosecution.

May I say that the prosecution has proceeded on this principle, that if there is any point of relevance in a witness for whome application is made, they will not of course object. But they want to make it quite clear, so the Tribunal will understand, that they are not, by making no objections, accepting the position that every point set out in the document or mentioned by counsel is admitted to be relevant. By making no objections they are simply admitting that there is some relevant point in the matter put forward.

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On that basis -- and the Tribunal will understand why I have to be careful in the matter--the prosecution make no objection in the case of General von Bodenschatz.

THE PRESIDENT: Yes, Dr. Stahmer.

DR. STAHMER: I name further, as witness, the former Gauleiter, Dr. Uiberreither, who at this time is at the prison in Nurnberg. Uiberreither is to give the following information. He can give information about a speech--

THE PRESIDENT: I wish to say to Sir David that perhaps, in view of what you have said, you might be able to indicate at the opening of Dr. Stahmer's motion in respect to each witness whether the prosecution have any objection to the witness. Perhaps that would make it easier for him to deal shortly with it.

SIR DAVID MAXWELL-FYFE: May I say that we have no objection to Dr. Uiberreither, on the same basis as I mentioned.

THE PRESIDENT: I only meant that if counsel for the prosecution indicate to us that they have no objection to a particular witness, then Dr. Stahmer can deal more shortly with the witness.

DR. STAHMER: Yes, sir.

THE PRESIDENT: Just inform us what the relevance of the evidence is, but do it shortly because the prosecution have got no objection.

DR. STAHMER: Yes.

THE PRESIDENT: In the case of this particular witness, wouldn't it be equally convenient for the defense, for the prupose of shortening things, to have this evidence taken either by an affidavit or by interrogatories?

DR. STAHMER: Regarding the witness Uiberreither, I have no question -- If I have the possibility to get a statement from the witness himself--

THE PRESIDENT: Before you pass on, you might just tell us what the substance of the evidence is.

DR. STAHMER: Uiberreither was present when Goering in the summer of 1938 spoke before the new gauleiters from Austria and in this speech dealt with the policy of the Reich and he spoke about the aims of the Four Year Plan in considerable detail.

The witness furthermore has been present when Goering, sometime after 10 November 1938, after the pogroms against the Jews, called the Gauleiters to

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Berlin and there criticised those actions very severely.

Those are the two matters of proof.

THE PRESIDENT: Very well. Then we can pass on to Number Three now.

DR. STAHMER: The witness which I name next is Lord Halifax. Referring to this witness--

SIR DAVID MAXWELL-FYFE: If I may indicate--the interrogatories have been served on and answered by Lord Halifax. The Prosecution has no objection to the interrogatories. Of course, they object to his being called, but we understand that the Tribunal and Dr. Stahmer agree to Lord Halifax being dealt with by means of interrogatories, and we have no objections.

DR. STAHMER: I am perfectly satisfied with the interrogatories which I have already received, so I do not insist on calling the witness personally before this Court.

THE PRESIDENT: Very well.

DR. STAHMER: The next witness is the witness Forbes. I may say that also in this case a interrogatory was accepted, and the interrogatory, as much as I have found out, has been sent out already. I have not received an answer, however.

SIR DAVID MAXWELL-FYFE: Well, we have no objection to Sir George Ogilvie-Forbes being dealt with by interrogatories. I will do my best to see that the answer is forthcoming as soon as possible. My recollections--I wasn't able to check it--is that Sir George is at a foreign capital, but I will do my best to see that the answers are brought and certainly will do everything to help on the point.

DR. STAHMER: Whether I can forego this witness, I will be able to find out when I get the interrogatory back. It may be in regard to some questions he has given an insufficient answer.

THE PRESIDENT: Do you mean Sir George Ogilvie-Forbes or Dahlerus?

DR. STAHMER: With Forbes.

THE PRESIDENT: Yes. Well, the interrogatories will be submitted to you as soon as they are answered.

DR. STAHMER: Yes, sir.

THE PRESIDENT: And I think the same is true of Dahlerus. Interrogatories have been granted for him.

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DR. STAHMERS: I have to say on the testimony of Dahlerus the following: The testimony of this witness seems to me so important that an interrogatory could not be sufficient to give all the information, and therefore I want to call the witness so that here he could be questioned and cross examined.

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If this should not be possible, I ask for theopportunity to question him personally at Stockholm.

Dr. Siemers knows Dahlerus personally, and he would like to make a statement concerning this witness.

DR. SIEMERS (Counsel for the defendant Raeder): I know Mr. Dahlerus personally for many years. Dahlerus has written to me about the fact that Dr. Stahmer intends to call him as a witness. Mr. Dahlerus in principle, agrees to come to Nurnberg if the Court considers it necessary. As soon as the Tribunal agrees, Mr. Dahlerus as far as I can see from his letter, will certainly be prepared to come to Nurnberg.

May I add, as a matter of principle that in the case of important witnesses who, as for instance Mr. Dahlerus, could answer questions which are of far reaching historic importance, most probably not only one defendant's Counsel will want to ask questions, the Counsel for several defendants, and, therefore, an interrogatory which has been sent only by Dr. Stahmer, in my opinion, in such a case would not be sufficient. I ask, therefore, to admit the witness also from this point of view.

SIR DAVID MAXWELL-FYFE: May it please the Tribunal, the position as to the witness Dahlerus is that Dr. Stahmer has put interrogatories consisting of 62 questions. I make no complaint of that at all. I only bring it to the notice of the Tribunal to show that Dr. Stahmer has certainly covered the ground.

In addition, if the Tribunal would turn for a moment to Dr. Stahmer's application for documents, they will see that Item 26 is Dahlerus' book -- if the Tribunal will pardon my Swedish, "Sista Forsoket" "The Last Attempt." That is quite a lengthy book, dealing in detail with this point, and it is desired and the Tribunal has allowed that Dr. Stahmer will use it.

In addition, the position of Mr. Dahlerus has been the subject of interrogatories to Lord Halifax, who was then the British Foreign Minister and to Sir George Ogilvie-Forbes, who was then Counsellor in Berlin, and on the main points of the matters, that Mr. Dahlerus had certain negotiations and paid certain visits, there is no dispute.

In my respectful submission, the defendant is well covered by the interrogatories, the connected interrogatories to Lord Halifax, and Sir

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George Ogilvie-Forbes, and the book, and the evidence of the defendant Goering himself, and it is unnecessary to investigate this matter further as to whether Mr. Dahlerus wishes to come and can come and should come from Sweden.

THE PRESIDENT: Sir David, may I ask you, have the Prosecution administered cross interrogatories to Dahlerus?

SIR DAVID MAXWELL FYFE: No.

THE PRESIDENT: There was another question. Did the defendant Raeder's counsel apply to have Dahlerus as a witness?

SIR DAVID MAXWELL-FYFE: No. The only other mention that I know of is by the defendant Ribbentrop's counsel on a limited point.

DR. HORN (Counsel for the defendant Von Ribbentrop): Before the Court makes a decision about the witness Dahlerus, I would like to say that I have asked for that witness for my client, Von Ribbentrop. The witness Dahlerus has in decisive hours before the outbreak of World War II in1939, played an important role. The witness Dahlerus particularly can give information about the last document which contained the conditions for further negotiations with Poland, and he can make important statements. This document was the cause for the great world war.

I believe that there should be sufficient reason to callthe witness Dahlerus to come here, especially since Dr. Siemers has declared that he knows that the witness on his own initiative is ready and prepared to come here.

DR. STAHMER: May I, concerning the importance of this motion, may I still state this: I have sent an interrogatory with 62 questions; that is true, but I do not believe that these questions still include everything on the subject. It is impossible to put allthat into the interrogatory precisely what the witness knows and to bring it out in such a form that the Tribunal could have a complete picture of the important function which Dahlerus had at that time concerning Germany and England.

THE PRESIDENT: Very well, the Tribunal will consider that point.

DR. STAHMER: As the next witness, I have requested Dr. Baron von Hammerstein, who was a general in the Air Force, Judiciary and who is at this time either in an American or British captivity.

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SIR DAVID MAXWELL-FYFE: With regard to Dr. Von Hammerstein, the Tribunal allowed interrogatories on the 9th of February, and Dr. Stahmer has not yet submitted the interrogatories, and the witness is not yet located. I have no objection to interrogatories. It seems as if this is essentially the type of witness that interrogatories would be most helpful with. He was the equivalent, as I understand it, of our Judge Advocate General of the Air Force, and interrogatories as to procedure, as foreshadowed in this application, would be a matter to which the Prosecution takes no objection at all. If he can be found, then Dr. Stahmer can administer the interrogatories as soon as he likes.

DR. STAHMER: As far as I could find out, I have not received any decision that an interrogatory should be sent, but I would like to ask to call Hammerstein as a witness.

THE PRESIDENT: Upon our documents, the right to administer interrogatories was granted 9 February.

DR. STAHMER: I can not find it at this moment, but I will check on it, Your Honor.

I would still like to call Hammerstein. He knows the defendant for many years, and that is concerning the subject which for the judgment on the defendant and his attitude to the war and also to the treatment of the population in occupied territories and the prisoners of war is of the greatest importance, and here also it will be important that the witness should give to the Tribunal detailed information about these facts and describe them in a manner here which can not possibly be done in an interrogatory or in an answer to an interrogatory.

SIR DAVID MAXWELL-FYFE: I am told, My Lord, that the interrogatories have been sent in and reached the Tribunal Secretariat a day or two ago. I don't want to add to my point.

DR. STAHMER: Yes, sir, I believe that is correct.

THE PRESIDENT: Yes, Dr. Stahmer, the next one?

DR. STAHMER: The next witness is Baron von Brauchitsch, Colonel of the Air Force, the Luftwaffe, son of General Field Marshal von Brauchitsch who is also here in the Nurnberg prison.

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SIR DAVID MAXWELL-FYFE: I have no objection to Colonel von Brauchitsch.

DR. STAHMER: This witness shall give information about the position of the defendant with regard to the lynching of the terror fliers and his attitude toward enemy fliers in general.

Next, General of the Luftwaffe, Kammhuber, who is either in American or British captivity.

SIR DAVID MAXWELL-FYFE: With regard to General Kammhuber, interrogatories were also allowed on 9 February this year, and they have not been submitted, as far as my information goes, and again the witness has not been located. I have no objection to interrogatories, and when the interrogatories are received, probably Dr. Stahmer can decide whether it is necessary to call the witness.

I remind the Tribunal that this sketch was introduced in quite guarded terms by Colonel Griffith-Jones, and therefore it seems to me the sort of subject that might well be investigated by interrogatories.

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THE PRESIDENT: Sir David, do you think that some agreed statement could be put in about this?

SIR DAVID MAXWELL-FYFE: If we could see the result of the interrogatories, we would certainly be willing to consider that because, as the Tribunal will no doubt remember, it was the plan showing the Luftwaffe commands in Warsaw and other districts outside Germany, and Colonel Griffith-Jones, in dealing with it, said that he was not stating positively that it had been placed before the defendant Goering. Therefore, if we have a statement, we should be most ready to consider it, and, if possible, agree on the point.

THE PRESIDENT: Yes, Dr. Stahmer?

DR. STAHMER: General of the Air Force Koller, in American captivity.

SIR DAVID MAXWELL-FYFE: The Prosecution have not objection to General Koller. The Tribunal ordered on 26 January that he should be alerted. He has not yet been located, but if he is located, then clearly the matters suggested are relevant in the view of the Prosecution.

DR. STAHMER: Colonel General Student, in English captivity.

SIR DAVID MAXWELL-FYFE: The Prosecution have no objection to this witness.

If Your Lordship will allow me one moment, I haven't had the chance to take this point up with my French colleague. As far as I know there is no objection. I would like to verify that.

I am grateful to Your Lordship. My French colleague, M. de Ribes, agrees that he has no objection.

DR. STAHMER: General Field Marshal Kesselring, who is in the Nurnberg prison at the present time.

SIR DAVID MAXWELL-FYFE: This is on the same point, and the Prosecution takes the same attitude.

THE PRESIDENT: The Tribunal would like to hear some explanation from you, Dr. Stahmer, on what the evidence -- what is the relevance of Field Marshal Kesselring's evidence.

DR. STAHMER: The facts about which he knows I consider relevant because it was said by the Prosecution that Rotterdam had been bombed without military necessity, had been attacked without military necessity and that that attack

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was still under way at a time when negotiations had begun for the capitulation of the city.

THE PRESIDENT: You do not say where General Student is, but General Student and Field Marshal Kesselring are to give evidence, as I understand it, on exactly the same point, and therefore, if Field Marshal Kesselring were called as a witness, wouldn't it be sufficient to give interrogatories or get an affidavit from General Student?

DR. STAHMER: Yes, sir, I agree.

SIR DAVID MAXWELL-FYFE: Agreed, My Lord.

THE PRESIDENT: Very well.

DR. STAHMER: Dr. Ondarza, Chief Surgeon of the Luftwaffe, domicile unknown to me at the present time, but he has probably been discharged from captivity and may be at Hamburg now.

SIR DAVID MAXWELL-FYFE: The next two witnesses are really on the same point. As I understood it, I thought that -- My copy is very bad, but I read it that the defendant was not informed of the experiments conducted by two doctors; the first one, I think, must be Rascher, and Dr. Romberg on inmates of Dachau and other places; that the defendanthimself never arranged for any experiments whatsoever on prisoners and Field Marshal Milch -- Paragraph A -- is that the defendant was not informed of the letters exchanged between the witness and Wolffe concerning the experiments conducted by Dr. Rascher in Dachau, in which prisoners were employed, and that the witness did not even inform the defendant of this subject; that Dr. Rascher, on assuming his activity in Dachau, withdrew from the Luftwaffe and joined the SS as a surgeon.

Clearly evidence on that point may be relevant. We have no objection to the witness being called.

It is the position with regard to the first witness, Dr. Ondarza, is that he is not located. The Tribunal ordered that he should be alerted on 26 Januar.

SIR DAVID MAXWELL-FYFE: Fieldmarshal Milch is in the prison. Again I should have thought that in these circumstances we would make no objection to Fieldmarshal Milch being called on this point. If the surgeon Ondarza can be located, then I shall vote that interrogatories would be done, but I don't feel very --

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THE PRESIDENT: Would that be agreeable to you, Dr. Stahmer, if we were to grant the application to call Fieldmarshal Milch on this point and were to allow interrogatories for the other witness who had been located?

DR. STAHMER: I have examined the question whether these two witnesses would have the same information. That is not the case. The subject concerning Milch is slightly different, and the defendant Goering considers it important to have Ondarza as a witness because Dr. Ondarza was for many years his physician and, therefore, is well informed, and, also, he is supposed to tell us that the defendant Goering did not know anything about the experiments which have been made with five hundred healthy people. I have not put that into my application, but I have just found out about that. There was a long protocol which was submitted by the Prosecution concerning five hundred brains. I have protested against that at the time and I was told that I should make this objection later at the appropriate time.

THE PRESIDENT: You can turn now to Koerner.

DR. STAHMER: State Secretary Paul Koerner, who is in the Nurnberg prison--

THE PRESIDENT: Dr. Stahmer, on our documents it is stated that the sugessted witness for Koerner is not located, but in the document of your application you say that he is in the Nurnberg prison.

DR. STAHMER; I have received that information, and at this moment I cannot say where I know if from.

SIR DAVID MAXWELL-FYFE: I am afraid I do not know, but I could easily find out for the Tribunal. I will ask if that can be checked.

THE PRESIDENT: If you would, yes.

SIR DAVID MAXWELL-FYFE: Yes. I have just been given a roster of internees on the 19th of February and he does not appear to be in that list.

THE PRESIDENT: In the Nurnberg prison?

SIR DAVID MAXWELL FYFE: Yes.

THE PRESIDENT: That is the information that I had.

SIR DAVID MAXWELL-FYFE: Yes.

THE PRESIDENT: What about his evidence, Dr. Stahmer?

DR. STAHMER: Koerner was the Secretary of State and he can made statements

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about the purpose which was connected with the establishment of concentration camps in 1931, about the treatment of the people imprisoned there, and what Goering had to do with these things until 1934 while he was in charge, and the witness can also make statements about the measures and regulations, the purpose and the aim of the Four Year Plan, and also about the attitude of the defendant after he had been informed in November, 1938, about the atrocities against the Jews.

THE PRESIDENT: Very well, the Tribunal will consider that.

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DR STAHLER: Dr Lohse, art historian, either in an English or an American camp.

SIR DAVID MAXWELL-FYFE: My information, My Lord, is that interrogatories were allowed on the 9th of February. They have not yet been submitted, and the witness is not yet located. I have no objection to interrogatories with regard to Dr.Lohse or the next witness, Dr.Dunjes, who deals with the same point.

THE PRESIDENT: Yes.

DR STAHLER: Also, the testimony of the witness Lohse seems to me important, considering the weight of the accusations which have been made against the defendant, and it seems to me to be so important that I ask again to have him as witness here before this Tribunal. The question is a very short one. We shall state how the defendant went about acquiring art objects in the occupied territories. That is a very short subject but, for the judgment of the defendant, it is very important; and since the prosecution has made that accusation, this is a very heavy one.

THE PRESIDENT: Who is the witness?

DR STAHLER: Lohse, sir.

SIR DAVID MAXWELL-FYFE: May it please the Tribunal; the interrogatories apparently seemed a suitable method to the Tribunal, and the prosecution respectfully submits that we should see what Dr. Lohse can say in answer to the interrogatories, and then Dr. Stahmer can, if necessary, renew his application.

THE PRESIDENT: Yes, Is there anything you want to say about Dr Dunjes?

DR. STAHLER: The last witness is Dr. Dunjes, also an art historian.

SIR DAVID MAXWELL-FYFE: My Lord, Dr. Dunjes is in exactly the same position as Dr. Lohse, and I do not think I need repeat what I said.

THE PRESIDENT: Except that he may be located. I do not know where he is.

SIR DAVID MAXWELL-FYFE: Yes, I think this is the first reference to Dr. Dunjes, and therefore we have not been able to find out whether he can be located or not.

THE PRESIDENT: Yes. Perhaps Dr Stahmer knows.

DR. STAHLER: I am told just now that Dr. Lohse is in the camp of Nersbrock.

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THE PRESIDENT: Where did you say it was?

DR. STAHLER: In the case of Nersbrück. That is not far from Nürnberg.

SIR DAVID MAXWELL-FYFE: Yes, I shall make inquiries about him.

THE PRESIDENT: Dr. Dunjes, do you know where he can be located?

DR STAHLER: No sir. He lived at Trier, but whether he is there now I could not say.

THE PRESIDENT: Yes. Very well, that concludes your witnesses. Does it not?

DR STAHLER: Yes, sir.

THE PRESIDENT: These are all that you are applying for?

DR STAHLER: Yes.

THE PRESIDENT: As far as you know, is that your final list?

DR STAHLER: I cannot say now. I cannot see it clearly now how far the prosecution, which has not finished, will make it necessary for me to make further applications for witnesses or documents.

THE PRESIDENT: Before we discuss the documents the Tribunal will adjourn.

(A recess was taken)

THE PRESIDENT: Perhaps we can deal with the documents more as a whole. Have you anything to say about them?

DR STAHLER: Mr President, may I ask one question?

THE PRESIDENT: Yes.

DR STAHLER: Considering the two witnesses, Koller and Koerner, I was told before that Koller was Chief of Staff of the Air Force, and Koerner, Undersecretary of State. Both were repeatedly questioned by the occupying forces of the occupying powers and that may make it easier to locate the witnesses.

SIR DAVID MAXWELL-FYFE: I will note that point and, of course we will do our best to help in locating them.

THE PRESIDENT: Which two witnesses are those?

SIR DAVID MAXWELL-FYFE: Koller and Koerner. They are both witnesses to whom I made no objection.

THE PRESIDENT: Yes, very well.

SIR DAVID MAXWELL-FYFE: It might be convenient, if the Tribunal please if I were to explain the general position of the prosecution with regard to

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the documents, and then Dr Stahmer could deal with these points because they fall within certain groups which I can indicate quite shortly. There are three documents which are not in evidence, but to which there is no objection.

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No. 19. The Anglo-German Naval Agreement. That is a treaty, of course, and the Court can take judicial cognizance of it.

THE PRESIDENT: Yes.

SIR DAVID MAXWELL-FYFE: No. 25. The Constitution of the German Reich (Weimar Constitution) of 11 August 1919. Again I shall assume the Court will take jedicial cognizance of it.

THE PRESIDENT: Certainly.

SIR DAVID MAXWELL-FYFE: No. 30. Hitler's Speech of 21 May 1935.

THE PRESIDENT: Yes.

SIR DAVID MAXWELL-FYFE: Then there are a number which are already in evidence as far as I know.

No. 4. The Rhine Pact of Locarno.

No. 5. The Memorandum to the Locarno Powers of the 25th of May 1935.

No. 6. Memorandum to the Locarno Powers of the 7th of March 1936.

No. 9. The Treaty of Versailles.

No. 17. The Speech by the Defendant von Neurath of 16 October 1933.

No. 18. The Proclamation by the Reich Government of the 16th of March 1935.

And then No. 7 was referred to but not read. That is the Speech by Ribbentrop before the League of Nations on the 19th of March 1936.

All these are in or have been referred to and, therefore, there is no objection as far as they are concerned.

Then we come to a series of books. Dr. Stahmer has at the moment referred to the three groups of books.

No. 1. The late Lord Rothermere's book, "Warnings and Prophecies."

No. 2. The late Sir Nevile Henderson's "Failure of a Mission."

No. 3. The references to a number of editions of the "Dokumente Der Deutschen Politik."

THE PRESIDENT: Those appear to be repeated, do they not, in the ones that follow or some of them? Six and seven, for instance, are taken from those volumes of the "Deutschen Politik."

SIR DAVID MAXWELL-FYFE: Yes, apparently they are, My Lord. If I might just give

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Your Lordship the others so that you have the group together.

No. 8. Mr. Fay's book on the "Origin of the World War."

No. 20. Mr. Winston Churchill's book "Step by Step."

No. 24. The Defendant Goering's book "Building up a Nation."

No. 26, which I have already referred to, is Mr. Dahlerus' book, "The Last Attempt."

With regard to these, there are two points: First of all, it is mechanically impossible to translate the whole of these books into Russian and French. I think most of them are in English already; secondly, the relevancy of the book can't be decided untilwe see the extract which Dr. Stahmer is going to use. So the Prosecution submits that Dr. Stahmer should at the earliest opportunity let us know what are the extracts on which he relies so that they can be translated and we can decide as to whether they are relevant or not.

Now the fourth category of books or documents, where either the issue is not clear or in as far as it is clear, it is obviously irrelevant. One to which I have already referred comes into this:

No. 8. "The Origin of the World War."

No. 10. Speech by President Wilson of 8 January 1918. That is the "Fourteen-Point Speech."

No. 11. The Note of President Wilson of 5 November 1918. That is the "Armistice Note."

No. 12. A Speech by Monsieur Paul Boncour of 8 April 1927.

No. 13. A Speech by General Bliss in Philadelphia, which is before 1921, because it is quoted in "What Really Happened at Paris," published in 1921.

No. 14. A Speech by the late Lord Lloyd George of 7 November 1927.

No. 15. An Article by Lord Cecil on the 1st of March 1924, and another on the 18th of November 1926.

No. 16. Lord Lloyd George's Memorandum for the Peace Conference of 25 March 1919.

May I pause there. As far as the Prosecution can judge, the only relevancy of those books and documents is as to the issue of whether the Treaty of Versailles accorded with the Fourteen Points of President Wilson. The Prosecution submits that that is closely removed from the issues of this trial and is just

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one of the matters against which the Charter proceeds and which should not be gone into by this Court. It may be that I am wrong or so it seems difficult, in view of the collection of documents, to suppose that there is another issue, but it may be, and I put it in this way, that Dr. Stahmer ought to indicate quite clearly what is the issue to which these documents are directed and where the document is located and to indicate what extracts he refers to. But in the issue of the Prosecution -- I speak for all my colleagues -- we submit that it is a completely irrelevant matter.

If the Tribunal would be good enough to take the other points -- I am sorry; I should have included in that same category Nos. 21 and 22, which are two letters of General Smuts in 1919. They ought to be added.

Then I have already dealt with No. 20, Mr. Churchills book.

Apart from the question of extracts, again the Prosecution submits that it ought to be made clear what is the issue for which that book has been quoted.

No. 23 is a Missive of Monsieur Tchitcherin, stated to be the Foreign Commisar of the USSR, to Professor Ludwig Stein. Again the Prosecution has not the slightest idea as to what is the issue to which that is directed.

The defendant Goering's book, which I have already dealt with, and I ask that we should get extracts.

No. 26. General Fuller's book on "Total War" or an essay on "Total War." Again the Prosecution does not know the issue at which it is directed.

Then my fifth category, No. 27, which is the "White Books of the German Foreign Office."

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I draw attention to No. 4 document, to the Anglo-France policy of extending the war; No. 5 serving the document as to the Western policy of extending the war; No. 6 is a secret file of the French General Staff; No. 29, documentation and reports of the German Foreign Office regarding breaches of the Hague regulations for any warfare and crimes against humanity committed by the power at war with the German Reich. These last documents seem to raise quite clearly the issue of the two questions in the Reich Committee of breaches of regulations and abuses of warpower through the people, or of the same thing. Contention of the prosecution is that that is entirely irrelevant. The standard is laid down by the convention, and it is no answer even if it were true that some one else had committed breaches. But, of course, there is the additional reason. It is quite impracticable and intolerable if this Tribunal were to embark on a further chart of investigating there the allegation, however conjecturally founded, that some one else had not maintained these conventions.

It is a submission of the prosecution again in speaking for all my colleagues of a matter which is completely irrelevant, and therefore we object to any evidence, whether it is all documentarily intended on their part. Of course, we all along have taken the view we have not any objection to defense counsel having access to these documents in order to use them for refreshing their memory as to the background of these, but we object to their introduction in evidence for the reasons I have given.

THE PRESIDENT: Yes, Dr. Stahmer, I will say in the first instance. Do you care to say, or are you agreed, that so far as the books are concerned that you would be willing to produce these extracts upon which you rely? You cannot expect the documentary room to get the whole book translated.

DR. STAHMER: It was never intended to, and I believe that in my lists of documents I have made preface where I have pointed out, and I was prepared to mention the exact quotations, so therefore this objection is not right.

THE PRESIDENT: Very well.

DR. STAHMER: Another point the prosecution is concerned is with the books which we have mentioned, and which has referred to the Treaty of Versaille. Here also I will give specific information as to what extent I wish to quote from these books. As a matter of principle, the defense must have the right, however, to take a position in that direction.

THE PRESIDENT; All these books which Mr. Fyfe refers to, of which the

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Tribunal will take judicial notice of, of course, you can make comment upon them if you wish; of any document of which the Tribunal takes judicial notice.

DR. STAHLER: Yes.

THE PRESIDENT: I thought you were referring to the Treaty of Versailles. It is not a question of a document.

DR. STAHLER: Yes, the report referred to the Treaty of Versailles.

THE PRESIDENT: You are now dealing with only of which today were itemized as follows: 8, 10, 11, 12, 13, 14, 15, 16, 21, and 22?

DR. STAHLER: Yes.

THE PRESIDENT: Very well.

DR. STAHLER: Since considerable objection has been made, or rather, since a considerable part of the accusation has been made by the prosecution consisting of the fact that the defendant has breached the Versailles Treaty, naturally the defense has to consent to the question if and how the breach of the Treaty took place and if and to what extent that Treaty is still violated. So far as these books and dissertations are concerned, these questions are all important. I believe that about this question, a decision can be reached only after I have presented the quotations, and that will be the case at the beginning of my case.

THE PRESIDENT: Are you precluding the question of validity, as with that question of justice?

DR. STAHLER: No, sir.

THEPRESIDENT: Go on.

DR. STAHLER: I believe that in this case also the defense should have the right to demand a presentation of the Reichs books, because the contents of th Reichs books will to a great extent provide information about the question of the interests at war, and that will state also a reference to these books that are important. Here also, in my opinion, it will only be possible to make a decision after the quotation from these Reichs books have been read. Furthermore, the presentation of the report concerning the breaches of the Hague has been demanded.

I believe that this motion should not be rejected with the remarks that it does not belong in the same work in this trial. Whether on the other sides such breaches have been committed, this statement in my opinion is of importance in two ways: First of all to reach a just decision one has to make sure whether

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the attitude or behavior on the other side was really correct and beyond reproach, or, it is furthermore of importance that the question depends upon whether or not on the side of the defendants it was not a question of revenge or of retaliation.

THE PRESIDENT: As I say, I believe you just covered the topic with the exception of Numbers 20, 23, and 28. Number 20 is the Winston Churchill book; Number 23 is the Tchitcherin book; and Number 28 is the General Fuller book. We will take those.

DR. STAHLER: Number 20 -- taking this step by step -- that is concerned with a statement in which Churchill as one was concerned with the question there of the Netherland agreement, 1935, of England. That was a sort of agreement by England as concerned Germany's separation from the Versailled Treaty.

Furthermore, from this book it can be seen, as much as I can see it now, that it can be used for the question as to what extent Germany has re-armed, to what extent England has re-armed, and finally in that book and in various places there are instances in reference to this now.

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SIR DAVID MAXWELL FYFE: I say with the greatest respect to Dr Stahmer that he has but reinforced my point, that if Dr Stahmer is putting forward the thesis that in order to reach a proper decision on the matters before the Tribunal it is necessary to investigate whether other belligerants have commited breaches of conventions, then, as I say, I join issue with him in toto, I cannot add to the matter. But with regard to Mr Churchill, Dr Stahmer makes three points, one that some passage in the book gives color to the idea that by the Naval Agreement the validty of the Versailles Treaty was affected. That is a point to which there are obviously many answers, including the facts that France was a party to the Treaty and the United States was a party to a treaty in the same terms. But clearly Mr Churchill's view as to the legal effect of one treaty or another expressed in a book, is in my opinion clearly irrelvant.

Equally irrelevant is the matter of British rearmant and the person alityes of Mr Churchill himself. And I requestfully sudmit, without going into detial, that Dr Stahmer has by his examples confirmed the argument that these matters are irrelevant to the issues before the Court. I don't wish to say more.

THE PRESIDENT: Dr Stahmer, the Tribunal would like you to go back from the question or if you like, deal with anything you have to say about Sir David Fyfe's observations about Mr Churchill if you prefer to do that

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now, but afterwards, and before you finish your argument upon these documents, the Tribunal would like to hear you somewhat further about Documents 8 and following up to 22, in order that you should develop your argument as to how they can be relevant. For instance, Documents 10 and 11, the speeches and notes of President Wilson. How can such documents as that have any bearing upon this trial or indeed upon the validity of the treaty of Versailles?

DR. STAHMER: Yes, sir, These passages form the foundation of the Versailles Treaty and they are significant therefore for the interpretation of the Treaty. And furthermore, it is important to refer to the speeches, in order to judge the contents of the Treaty and the question whether Germany rightfully or wrongly has separated herself from the Treaty, that is, whether it was a breach of the Treaty, or whether the Treaty in itself gave Germany the right to withdraw.

THE PRESIDENT: Is that all you wish to say about that?

DR. STAHMER: Yes.

THE PRESIDENT: Do you wish to say anything further about No.20, 23,or 28?

DR. STAHMER: I have spoken about 20. Twenty-three refers to the very same questions regarding an interpretation and the contents of the Treaty of Versailles.

THE PRESIDENT: Your statement about the Foreign Commissar of the USSR in 1924 - -

DR. STAHMER: 1924?

THE PRESIDENT: 1924.Very well, you insist on the interpretation of the Versailles Treaty, and as General Fuller's book - -

DR. STAHMER : That only - - General Fuller also refers in this speech first of all to the person of Hitler and to the question of rearmament, that is to say, German rearmament.

THE PRESIDENT: Very well then.

(Consultation of the members of the Tribunal on the bench.)

Then we will consider that statement - - on that point the Tribunal will consider their decision upon your witnesses and upon your documents.

Have you anything further to say upon it?

DR. STAHMER: No, sir.

(Professor Franz Exner, Counsel for the Defendant Jodl approached the lectern.)

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THE PRESIDENT: Yes, dr. Exner?

PROFESSOR EXNER: May it please the court, I take the liberty to mention something merely for the reason that there is a certain danger that matters of proof may be refused which for my clients also are of crucial importance. It concerns evidence which will show that on the opposite side as well,- - war crimes, or breaches and violations of international law have occured.

The prosecutor has said that this is irrevelant as

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far as we are concerned here in this trial. The Defense would certainly not think of making Defendants of the Prosecutors, but this point is certainly not irrelevant.

First, it has to do with the idea of retaliations in international law. Retaliations justify an action which under normal circumstances would be illegal. That is to say, retaliations of that importance or significance in cases where individual actions are the answer to a violation of international law committed by the other side. If, therefore, our own actions can be justified -- if you want to justify them as retaliations -- we can only do it by proving that violations of law have preceded it on the other side.

Secondly, I want to add an important point. It is well known that this war in the beginning was conducted relatively --

THE PRESIDENT: The argument which you are presenting to us was fully developed by Dr. Stahmer and will, of course, be fully considered by the Tribunal.

(Consultation of the members of the Tribunal on the Bench).

Will you continue, then, Dr. Exner?

PROFESSOR EXNER: The second point is the following: It is well known that in the beginning of this war international law was respected on both sides and that the war was conducted humanely. It was only in the second phase of the war that there was a terrible bitterness among the fighting powers and on both sides things have occurred which were not according to international law. In my opinion, it is entirely important in the judgment of the criminal action, whatever that may be, to consider the motive. If the motive of the action is not known, you cannot judge the action itself. And the bitterness which was started psychologically by the manner in which the war has been conducted on one side or the other was the motive for actions which normally cannot be justified.

I therefore ask the Tribunal to consider carefully before these matters of proof are declared irrelevant.

(Consultation of the members of the Tribunal on the Bench).

DR. WALTER SIEMERS (Counsel for the Defendant Raeder): I would like to refer to the manner in which we are speaking now about evidence, and I want

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to say inprinciple, if I understand the Tribunal correctly, then we should talk today about the relevancy of these witnesses and documents which are still to be brought here, and which were mentioned in the tribunal's decision of the 18th of February.

Now, however, we are talking about documents which we already have in our hands. I therefore ask the Tribunal to understand why I object against it. In no case was it possible to discuss relevancy of documents of the Prosecution weeks before they were presented. We could never discuss that. If I have documents before me, the same as most of the documents about which we have spoken, then as Defendant's Counsel I must be able to submit these documents without consent of the Prosecution.

Sir David has said that the relevancy of books which are here in the building has to be examined after we have presented the quotations and then the Prosecution will decide whether they are relevant. Sir David has also said that various books which are here are not relevant. If this instant motion by the Prosecution is granted, then that is an extraordinary limitation of the Defense which I cannot accept without objection.

The Prosecution was permitted to submit documents. The Court has decided that each letter and each document could be presented and therefore I do not understand why we are now arguing about the relevancy of documents which are here, since in my opinion the Court has already said that we will argue only about the relevancy of documents which are still to be procured.

THE PRESIDENT: I thought that on behalf of the Tribunal I had explained this morning -- in answer to the argument of Dr. Horn on behalf of the Defendant Ribbentrop -- what the Tribunal was seeking to do today, to follow the provision of Article 24-D, which provides that the Tribunal shall ask the Prosecution and Defense what evidence if any they wish to submit to the Tribunal and the Tribunal shall rule on the admissibility of any such evidence, and I point out that the reason why the Defense had been to some extent treated in a different manner from the Prosecution was because in the case of the Defense the Tribunal has got to find all the witnesses and bring them here and the Tribunal has got in many instances to find the documents or submit the documents, and therefore it isn't reason-

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able that the Tribunal should be asked to bring witnesses or documents here and it also is not in accordance with the Charter, until the Tribunal has heard argument upon the admissibility of the witness or the document. And that is what it is doing. I thought I fully explained that in answer to Dr. Horn's argument.

It is perfectly true that you cannot move finally on the admissibility of a document or the admissibility of a witness until you have actually heard the passage in the document which is relied upon or the questions put to the witness which are said to be relevant or irrelevant. Therefore, the final determination upon the question of admissibility will be when the witness is put in the witness-box and asked questions or the documents or passage from the document is actually produced.

DR. SIEMERS: Yes, sir. Excuse me, but I believe that this does not answer one point.

It is obviously true that we are arguing here about documents and witnesses which are not as yet at our disposal. But it is a different thing in the case of these documents which are already here in this building and which are at our disposal as Defense Counsel. To give an example: The White Books which Sir David has mentioned here, why should we now

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argue about the relevance of these White Books? This question has nothing to do with the delay of the trial, nothing but the procurement of documents.

THE PRESIDENT: Do you wish to say anything to that, General Rudenko?

GENERAL RUDENKO: Yes, Mr. President, with your permission, I would like to say a few words.

Sir David Fyfe has already submitted the point of view of the Prosecution on the question concerning the demand of the Defense Counsel. I would like to add to what has already been said by Sir David Fyfe, with regard to the declaration made here by the Defense Counsel.

The position of Defense Counsel Exner is that the Defense would not like to turn the Prosecutor into a Defendant and that theywould like to determine the motives as in his opinion the motives were not known, and that in order to determine these motives it was necessary to investigate the question whether the conventions were violated by other warring powers.

In my opinion -- and I believe that I am also expressing the point of view of all the Prosecution -- it is really strange to hear such a declaration on the part of such a Defense Counsel after a three-months-long trial and after the presention of all proofs by the Prosecution.

Itis indisputable that the Defense has full right to submit proofs, documents and testimony on all the counts of the charges presented against the Defendants, and as is evident from this morning's session, when we were investigating the questions of the Counsel for Defendant Foering, as the Tribunal knows,the Tribunal agreed to a major part of Defense Counsel's requests. But the question which is being put by Dr. Exner reveals quite certainly a divergence of views.

The Prosecution considers that we cannot leave -- we cannot abandon -- the main point of the trial. This is a trial of the main German war criminals. We are investigating the Fascist crimes and even when we investigate all the proofs which are presented by the prosecution and by the Defense Counsel, we can also present all evidence concerning these counts. But it is not admissible and it would indeed be a gross violation of the Charter while investigating these charges to dwell on problems which have absolutely nothing

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to do with the charges we are investigating, and that is why the Prosecution is so energetically objecting to the presentation and the reading of such documents which have absolutely nothing to do with this case. That is what I wanted to add to what Sir David Maxwell-Fyfe has said on behalf of the Prosecution.

THE PRESIDENT: Before the Tribunal adjourns, as it will do not, I want to say that the next four defendants on the Indictment are required to name their witnesses and the subject matter of their evidence, and the documents and the relevance of the documents, by Wednesday next at 5:00 p.m. The Tribunal will hold a similar session to the session it has been holding this morning with reference to the defense of those defendants on Saturday next at 10:00 o'clock.

The Tribunal will now adjourn until 2:15.

(A recess was taken until 1415 hours.)

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Official transcript of the International Military Tribunal in the matter of The United States of America, the French Republic, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics against Hermann Wilhelm Goering et al, Defendants, sitting at Nurnberg, Germany, on 23 February 1946, 1400-1615, Lord Justice Lawrence presiding.

THE PRESIDENT: I have an announcement to make: With reference to the pronouncement that I made this morning, the Tribunal may hear the applications for witnesses and documents of the Defendants Kaltenbrunner, Rosenberg, Frank, and Frick, before Saturday. That will depend upon theprogress of the case. I have already stated that those applications must be deposited with the General Secretary by 5 o'clock P.M. on Wednesday.

Secondly, all the Defendants other than the first eight named in the Indictment must make application naming their witnesses and the relevance of their evidence, and the documents and the relevancy of the documents, by Friday next at 5 P.M.

Thirdly, the Tribunal will sit in closed session on Monday next at 4 P.M.

Perhaps I ought also to say that this doesn't affect -- may affect but it does not refer directly to Defendants' Counsel who represent the criminal organizations. Those Counsel will be heard after the close of the Prosecution's case, as has already been announced.

Next would be Hess.

SIR DAVID MAXWELL-FYFE: I only want to say that if the Tribunal desire to hear anything on the question of reprisals, which was raised by Dr. Exner, Mr. Dodd is prepared, if the Tribunal would care to hear further matter on it.

THE PRESIDENT: Yes. The Tribunal would like to hear that now.

MR. DODD: May it please the Tribunal: I wish to say at the very outset that I have made a rather hurried preparation during the noon recess of the few notes on this subject based on some work which we had done a little earlier. I am not altogether prepared to go into the matter at any great length at this time, but I did want to call to the attention of the Tribunal a few of these notes that we have prepared and to say that, in view of Dr. Exner's contention that some of the documents which are offered by the

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Defense, or which they intend or hope to offer, are admissible on the theory or under the doctrine of reprisal.

We would like to say to the Tribunal that the Convention of 1929 concerning the treatment of prisoners of war expressly prohibits altogether the use of reprisals against prisoners of war.

Parenthetically, I might say that the United States prohibited in its army instructions reprisals against prisoners of war as early as 1862 or 1863.

Secondly, I should like to point out that the Hague Regulations do not mention at all, insofar as we are able to ascertain, the use of so-called "reprisal action" against civilians.

It appears that the Brussels Conference of 1874, which accepted the unratified Brussels Declaration, so-called in International Law -- that conference rejected or struck out several sections which were proposed by the Russians at that time, having to do with the use of reprisal action against civilians. I cite that because it is interesting and indicates that the powers were certainly thinking about the matter of reprisals against civilians as early as that time.

Thirdly, I should like to point out to the Tribunal that it is commonly said by the writers on this subject that before reprisal action may be taken a notice of some character is usually required, and this reprisal action is directed against some specific instance which the first power believes to be offensive and which it believes may call for or justify the use of reprisal action. So that some notice of some kind seems to be required by the power which feels it has been offended to the offending power.

I might say that in the Prosecution's case in chief we specifically avoided any reference to the well-known incident during this war of the shackling of prisoners of war, because there there was some color of notice, and the matter was resolved by the powers concerned.

These are the points that we have had in mind during this brief recess this noontime, and if the Tribunal would like to have us do it, we shall be glad to prepare ourselves further.

THE PRESIDENT: Thank you.

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SIR DAVID MAXWELL-FYFE: May it please the Tribunal: The position with regard to the Defendant Hess is set out in Dr. Seidl's communication to the Tribunal, and I have one or two comments to make on that on behalf of the Prosecution.

THE PRESIDENT: Is Dr. Seidl prepared to make the application? Would it be convenient to follow the same course as we followed with Dr. Stahmer, and perhaps Sir David may see if he has any objection, first of all to the witnesses, one by one, that you are asking for?

DR. SEIDL (Counsel for Defendant Hess): I should like to request the Court to permit me a short preparatory remark.

THE PRESIDENT: Yes.

DR. SEIDL: My Lord, Judges: From what happened in this morning's session I had the conviction that now the trial has entered into a decisive phase, at any rate so far as concerns the Defense. I competently feel myself obliged to make the following application:

I should like to ask that the Court at this point in the trial should undertake to examine the relevance of the evidence submitted by the Defense and should limit itself in this to the witnesses, and as to the relevance of documents it should wait until a later time. I base this request on the following:

For the first time, on 17 September, the Court made a statement regarding the submission of evidence by the Defense. In this it was only witnesses and not documents that were discussed.

A second decision of the 18th of February mentions the following: In order to avoid a delay in the bringing of witnesses and documents, Defense Counsel shall, etc.

I am of the opinion, My Lord, Judges, that the question whether a document has relevance can only be decided when I have this document in my own hands; in other words, when I am familiar with the precise contents of that document. It is impossible in a summary proceeding such as is now being attempted, in which the admissibility of whole books is being decided on, to pass accurate judgment whether a particular passage in a document has relevancy of not. This question can only then be decided once and for all when

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the Prosecution and the Court have the documents in their hands, before the Defense wishes to submit it.

THE PRESIDENT: But, Dr. Seidl, I have stated twice this morning that the question of the final admissibility, whether of witnesses or evidence, or documentary evidence, can only be finally decided when the document is actually put in or when the witness is actually asked a question. What we are now considering is whether the document has any possibility of relevance and must, therefore, be searched for if necessary, or sent for.

DR. SEIDL: Yes. If I understand you correctly, Mr. President, it is not necessary ---

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THE PRESIDENT: Dr. Seidl. the Tribunal thinks that you had better deal with your witnesses and documents now, and we don't desire to hear any further general argument on the subject. We desire to hear you upon the documents and the witnesses which you wish to call and to produce.

Dr.SEIDL: It is a question of the documents I have already mentioned, and not that I am about to mention.

THE PRESIDENT: Yes, the documents which you are about to mention.

DR, SEIDL: It is a question of all the documents, and not simply the documents that I shall produce in the future.

THE PRESIDENT: Well, we have before us your application for certain witnesses and certain documents, and we wish to hear you upon that application.

DR. SEIDL: Very well, but I must draw up a list by next Wednesday also for the Defendant Frank, and I should like to know whether those documents should be brought up which I already have in my own hands.

THE PRESIDENT: Well, first of all you had better deal with your witnesses in the same way that Dr Stahmer did,

DR. SEIDL: Very well.

The first witness that I intend to hear is Fraulein Ingeborg Berg, previous secretary of the defendant Hess.

SIR DAVID MAXWELL - FYFE: My Lord, I haven't seen this list until a moment ago.

THE PRESIDENT: The witness he wants to call is Ingeborg Berg.

SIR DAVID MAXWELL- FYFE: If Dr Seidl tells me that this lady was a private secretary of hess, it seems to me, prima facie, a reasonable that there was a chance of discussing the matter, As a general rule it seems to me reasonable that a private secretary can be called who can corroborate the matters with which the defendant was dealing. I don't think any of my colleagues will disagree with that point.

DR.SEIDL: My second witness is the previous Gauleiter of the Foreign Organization of the NSDAP, Dr, Bohle.

THE PRESIDENT: Dr. Seidl, you haven't really adopted the procedure which the Tribunal asked you to adopt, You have'nt specified the relevancr of the evidence which you wish to produce. You have referred to some previouse application. The Tribunal has not got all these applications before it at the

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moment, and therefore we wish to know in what respect the evidence of Ingeborg Berg is relevant.

DR. SEIDL: I shall explain that. Madam Berg was Hess' secretary at his liaison offices in Berlin. She is to make statements as to since when Hess had been making preparations for his flight to England, and what sort of preparations they were.

She is further to testify as to what Hess' attitude was toward the Jewish question in a particular case, namely, in connection with the Progrom of 8 November 1938.

THE PRESIDENT: Is she in Nurnberg?

DR. SEIDL: She is here, yes.

THE PRESIDENT: You may deal with the second witness now, if you like.

DR. SEIDL: The second witness is the previous Gauleiter of the Foreign Organization of the NSDAP, Dr Bohle. He is here in prison.

He is to testify whether the Foreign Organization of the NSDAP had any activity which might be interpreted as fifth column activity.

SIR DAVID MAXWELL-FYFE: On the second witness, that is one of our allegations against the Auslands Organization, and therefore it does seem relevant.

I make no objection.

DR. SEIDL: Dr Schellenberg is the third witness I mention. Whether I shall be able to uphold this application I can only judge after the Court has given me the opportunity to speak personally with these witnesses who are here in Nurnberg. I do not know whether the witness, in the period before the 5th June, could be reached. I should like to say that my time was previously occupied with interrogating a witness.

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I should, consequently, like to ask the Tribunal, first of all, to be able to speak to this witness personally.

THE PRESIDENT: Do you have anything to say about that, Sir David?

SIR DAVID MAXWELL-FYFE: I understand that this is the witness Schellenberg who was called for the prosecution.

THEPRESIDENT: Yes.

SIR DAVID MAXWELL FYFE: I submit that it would be very undesirable to have private conversations with witnesses before cross-examinations. If Dr. Seidl wishes to cross examine thewitness Schellenberg further, then he ought to apply to the Court to cross-examine him in open court.

THE PRESIDENT: Well, I think I remember that some of the defendant's counsel asked to postpone the further cross examination of Dr. Schellenberg.

SIR DAVID MAXWELL-FYFE: My Lord, my objection is not to the further cross examination; that is a matter, of course, which is entirely for the Court once a witness is in its hands. But my recollection is that Dr. Merkel and Dr. Kaufmann also wanted to cross examine the witness further, and therefore I submit that both generally and on this particular occasion it would be very undesirable for any counsel who is going to cross examine to have a private conversation with the witness before he cross examines. That is the matter to which I object.

THE PRESIDENT: Yes, but if the defendants' counsel finally decide that they are not going to cross examine the witness, I suppose then they would be able to examine him in chief if they wanted to do so, to call him.

SIR DAVID MAXWELL-FYFE: Well, I have never heard, my Lord, of that procedure being adopted. If a witness is called by one side, then the other side must, in my respectful submission, do what they can by way of cross examination. The witness is before the Court and, as theprosecution have called the witness, then I submit that the defense should deal with the witness by way of cross examination. They have the additional rights which cross examination gives, which is a compensation for the other rights which they would have if he were their own witness.

DR. SEIDL: We might reach some agreement that the defense would renounce the right to cross examination, if the witness can actually say something pertinent, if we could have him give an affidavit. I do not believe that the prosecution would object to that.

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THE PRESIDENT: Sir David, as there are no technical rules of evidence applicable to this trial, would it be objectionable, would you say, if the defense were permitted to see Schellenberg in the presence of a representative of the prosecution, if that is satisfactory to them?

SIR DAVID MAXWELL-FYFE: I am surethe prosecution all desire that only the interests of justice should be furthered, and if the Tribunal consider that that would be a suitable method of dealing with it, the prosecution would raise no objection.

THE PRESIDENT: I see.

Unless you wish to say something further about Schellenberg, the Tribunal will consider your application.

DR. SEIDL: Very well.

THE PRESIDENT: Have you any other witnesses that you wish to refer to?

DR. SEIDL: For the time being, no. However, according to the position of the 18th of Februrry, every defense counsel has the right, until the conclusion of the trial, to ask permission to call further witnesses.

THE PRESIDENT: I think now is the time for you to apply; in accordance with the order of the Tribunal to which you are referring, this is the time at which you are to apply for any witnesses you want. The Tribunal always has the discretion, which it would exercise, if you prefer to make any further applications. If later you want to ask for further witnesses, the Tribunal will always consider your application.

Did you get that?

DR. SEIDL: Yes, Mr. President.

As to the question of whether the foreign organization was related to Der Bund Deutscher im Osten, and Der Volksbund der Deutschen im Ausland, and as to whether its activities were similar to those of the fifth column, a witness might be called on this question, the brother of Rudolf Hess, who was previously an alternate Gauleiter of the Foreign Organization of the NSDAP, and is at the moment in Mergentheim in an internment camp.

THE PRESIDENT: Well, we haven't got your application in front of us with reference to that. If you want to make any further application you may do so.

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DR. SEIDL: I hereby make the application.

THE PRESIDENT: You say you want to make it now?

DR. SEIDL: If it is possible I should like to make the application now. I am, of course, perfectly prepared to submit that application in writing later.

THE PRESIDENT: Well, the Tribunal will hear you now, then, upon this application, and you can put the application in writing afterwards as a matter of record.

DR. SEIDL: Very well.

THE PRESIDENT: What is his name?

DR. SEIDL: Alfred Hess. His last official position was Deputy Gauleiter of the Foreign Organization of the NSDAP. At the time being he is in Mergentheim, in the internment camp there.

THE PRESIDENT: Yes? For what purpose? You said because he was going to speak as to fifth column activities; was that it?

DR. SEIDL: Regarding the fifth column and regarding the question of whether or not the foreign organization of the NSDAP was related to Der Volksbund der Deutschen im Ausland and Der Bund Deutscher im Osten, and was so related in a way to carry out fifth column activities.

THE PRESIDENT: Sir David?

SIR DAVID MAXWELL-FYFE: My Lord, I have already conceded that this is a relevant issue, and therefore the only question is cumulation. The defendant Hess will himself be able to speak on this point, and the witness further if the Tribunal allows it.

The Tribunal might well consider, in my submission, that an affidavit or interrogatories from a third witness on the point would be sufficient at the moment, unless any further issue is disclosed, in which case Dr. Seidl could summon the witness.

THE PRESIDENT: Well, now, you can pass on to your documents.

DR. SEIDL: Very well. It is my intention for individual documents in Rudolf Hess's document book, to read various passages in order to establish the connection. A further justification of the relevance of these documents is superfluous, since the question of documents submitted by the prosecution--they have already been accepted in evidence by the Court.

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SIR DAVID MAXWELL-FYFE: My Lord, the application is in this form.

"I intend to read pages from the following books: Rudolf Hess' Speeches; Directives by the Deputy of the Fuehrer. The relevancy of these documents can be inferred simply from the fact that both have already been introduced in evidence by the prosecution."

In so far as the documents are documents already before the Tribunal, of course Dr. Seidl may, within the usual limits, comment on them as much as he likes. If he intends to put in other speeches and directives, documents of the same class, then the prosecution asks that he indicate which speeches and which directives he is going to put in.

DR. SEIDL: What Sir David Maxwell-Fyfe read was the outline of my application. It is true that from the book of Rudolf Hess' speeches I intend to read certain passages, and further, from the book Orders of the Deputy of the Fuehrer. The prosecution has already submitted both these books in evidence, and the Court has accepted them.

I believe I may say that it is here a question of documents that are most certainly relevant. Whether these passages that I intend to read are relevant or not can only be decided after I submit these documents.

This refers back to what I was saying at the beginning of my application, that it is only possible to decide on the relevancy of a document when one has that document before one and knows its precise contents.

SIR DAVID MAXWELL-FYFE: I hope Dr. Seidl will realize that this is largely a matter of mechanics. If he is going to introduce new speeches and new directives, they have got to be translated into English, Russian, and French; and therefore it will be necessary, for the general progress of the trial, that he should indicated which passages he is going to put in so that they can be translated as well as considered.

I am sure that Dr. Seidl will only desire to use relevant passages. Naturally, every politician makes many speeches on many subjects, and some of Hess' speeches may well not be relevant.

I suggest that it is not unreasonable; we are only trying to help along the general progress of the trial by the request that I have made.

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DR. SEIDL: Of course, Mr. President, I shall read only those passages, and few of them at that, which are relevant. It never entered my mind to read whole sections of the book if it is not necessary.

I here make a formal statement to the Tribunal that neither as defense counsel for Hess nor for Frank shall I submit one single document that could not be recognized as relevant.

THE PRESIDENT: Yes, but what Sir David was saying was that for the mechanics of the trial, owing to the unfortunate fact that we don't all understand German, it is necessary that these documents which are in German should be translated. Therefore, it is necessary for you to specify which speech and which part of the speech you propose to rely upon, and then it will be translated.

DR. SEIDL: Mr. President, I shall incorporate every single passage that I intend to read in a document book, and every passage from a speech that I intend to read will be submitted to the Court, in proper time, in a document book.

It is not the concern of the prosecution, nor of the General Secretary, to take up the work which, of course, I shall attend to.

SIR DAVID MAXWELL-FYFE: Mr Lord, that is quite all right. That is exactly the point that I was seeking to make.

THE PRESIDENT: Very well, then. Now you are coming to paragraph 3.

DR. SEIDL: Yes. Thirdly, I shall read passages from the report of the conference between Lord Byron and Hess, which took place in 1941. I shall attempt to prove in this the motives and aims which moved the defendant Hess to his flight to England.

The relevancy of this can be seen from the fact that the prosecution has submitted a report of this conference with Sir Kilpatrick.

SIR DAVID MAXWELL-FYFE: If Dr. Seidly thinks that that conversation adds anything to the conversations with the Duke of Hamilton and Mr. Kilpatrick, I shall not object to him reading the report.

THE PRESIDENT: Where is the document?

DR. SEIDL: It is in my hands.

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THE PRESIDENT: What is the nature of the document? I mean, what authenticity has it? Whoe made it? Who wrote it?

DR. SEIDL: The document was found among the papers of the defendant Hess, and were given to him when he was brought from England back to Germany. It is a carbon copy, certified by an official stamp; it is certified as the carbon copy of an original.

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THE PRESIDENT: The Tribunal would like to see the document.

DR. SEIDL: Very well.

THE PRESIDENT: If you will let us have the document, we will consider it.

DR. SEIDL: Very well.

THE PRESIDENT: Then there is a letter, isn't there? There are two other documents referred to, but you are not asking us for those? A document of a letter to Hitler on the Reich Cabinet dated 10 May 1941.

DR. SEIDL: This application apparently was made by my predecessor. I should like to have an opportunity of examining the relevancy of this point.

THE PRESIDENT: Very well. Do you wish to say anything, Sir David, about them?

SIR DAVID MAXWELL-FYFE: We haven't got that document. The Prosecution have not got the letter that the Defendant Hess sent to Hitler, and we just simply can not help on that point.

THE PRESIDENT: Very well. If that document can be located, it shall be submitted to you.

DR. SEIDL: Very well.

THE PRESIDENT: Now, Dr. Horn.

DR. HORN (Counsel for defendant Ribbentrop): It is my intention to call as the first witness for the defendant Ribbentrop the Ambassador Friedrich Gaus, at present in a camp at minder near Hannover.

He was for more than three decades the leader of the legal department of the German Foreign Office, and in this capacity, it is to be seen, how necessary this witness is.

SIR DAVID MAXWELL-FYFE: If Dr. Horn would carry out the same procedure as Dr. Stahmer and pause for a moment when he has introduced the witness, I shall then be able to indicate in the same way whether there is any objection.

DR. HORN: Certainly.

SIR DAVID MAXWELL-FYFE: As far as Herr Gaus is concerned, there is no objection, subject to one point on what I may call the Foreign Office, group of witness, and I think it will be convenient if I develop it now, and then Dr. Horn would deal with the point in one moment.

Dr. Horn is asking for Herr Gaus, Miss Blank, who is the defendant's private secretary, and then witnesses three to seven, five foreign office officials Sonnleitner, Rintelen, Gottfriedsen, Hilger and Bruns.

The position at the moment is that there is some doubt as to whether Miss Blank was allowed or not by the Tribunal, and two of the witnesses, von Sonnleitner and von Rintelen were granted on 5 December. Von Sonnleitner was granted as one of two and Herr Bruns was granted simpliciter.

The Prosecution draw the attention of the Tribunal to the fact that no special facts are stated as to which these witness will speak, and at the present moment, the applications are not within the Rule of Procedure 4 (a), but what the Prosecution suggest is this:

That is is reasonable that the defendant should have certain witnesses who will speak as to Foreign Office business and activities, but they suggest that if he has Herr Gaus and his private secretary, Miss Blank, that one other Foreign Office official to speak as to the general methods would be sufficient, and Sonnleitner is obviously the sort of person who could help the defendant on General Foreign Office matters. They suggest that to call seven witnesses to deal with his general position in the business would be unduly cumulative, and they suggest that three is sufficient.

I hope the Tribunal will not mind my dealing with the seven witnesses, but really my point involves the number of them.

DR. HORN: May I reply to that: Dr. Gaus in all probability, will be my main witness. Therefore, since 10 November 1945, we have done everything to find this witness and after that had been accomplished, to bring him here. The witness is not personally here, and I consequently am not in possession of the knowledge of precisely what he will testify. For this reason I would also like not to commit myself as to the other witnesses from the Foreign Office.

I should like to make this application. The other witnesses whom I have listed here are not such as will give testimony on routine matters or, as Sir David said, on general matters regarding the Foreign Office. Rather, they are witnesses who can give testimony on very specific points which were brought up by this Prosecution.

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I vonsequently suggest that, as to the calling of these other witnesses, a decision should be reached only after Ambassador Gaus is here. In connection with this, I should like to ask the Court again personally to assist me in the calling of this extraordinarily important witness because only if I have him here in a short time can I submit my evidence in writing to the General Secretary in time.

THE PRESIDENT: Yes. Well, we will consider that. That deals with one to seven, does it not?

DR. HORN: Mr. President, I should like to remark that the witness listed under number two I should like to be omitted. Consequently, not two to seven, but three to seven.

Fraulein Blank has made the following statement. For many years she was secretary of the former Minister of Foreign Affairs, von Ribbentrop, since 1933. The witness Blank drew up a large number of definitively important sketches and plans and also was in touch with Ribbentrop at decisive moments and spoke to him about these things. I should like to call--

THE PRESIDENT: Then you are asking, are you, that Ambassador Gaus and Fraulein Blank should be brought here as soon as possible that the consideration of the other witness, three to seven, should be deferred until you have had an opportunity of seeing Gaus and Blank?

DR. HORN: Yes. As regards Fraulein Blank, I say that she is in an internment camp near Nurnberg, Hersbruck.

THE PRESIDENT: Do you mean that she is so near that you could see her yourself there?

DR. HORN: I did not understand; I'm sorry.

THE PRESIDENT: Did you mean that Fraulein Blank is in a camp so near Nurnberg that you could go and visit her and speak to her there?

DR. HORN: Yes, I do have that possibility. May I interpret this as authorization to visit Fraulein Blank in order to interrogate her?

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THE PRESIDENT: We understand that this is your application, and we will consider it.

DR. HORN: Thank you.

As my next witness I name the previous SS Gruppenfuehrer and personal adjutant to Hitler, at the time being in the Nurnberg prison.

THE PRESIDENT: Yes, Sir David?

SIR DAVID MAXWELL-FYFE: With regard to this witness, the application says that there was a decisive conference between Hitler and the defendant von Ribbentrop, and that he can speak as to certain things that occurred. If that is so, if he can speak as one attending the conference, the Prosecution have no objection.

This object -- and this point will arise in regard to a number of witnesses -- to what I call self-created evidence. That is if a witness is merely coming to say that the defendant said that he had certain views, that, in the submission of the Prosecution, does not carry the thing any further. If I understand, this witness is speaking as an observer of the conference, and, as such, we take no objection.

DR. HORN: I should like to give Sir David my assurance that this is a witness who has immediate, first-hand knowledge of these decisive events and can give such testimony.

My next witness is Adolph von Steengracht, 41 day Secretary of the Foreign Office, now in Nurnberg in the numicipal prison.

SIR DAVID MAXWELL-FYFE: If the Tribunal would be good enough to look at the seventh line from the foot of this application, it says that Steengracht will further testify that, contrary to the assertions of the Chief Prosecutor of the United States, the protests of the churches and of the Vatican were always processed, thus obviating even worse excesses.

If it is meant by that -- and the English is a little obscure -- that the defendant Ribbentrop sent forward the protests of the churches to Hitler, then the Prosecution would feel that they ought not to object to the witness.

DR. HORN: I can say in regard to this, Mr. President, that these protests were submitted not only to Hitler, but that furthermore, and on the initiative and order of the defendant, those officers involved in these crimes were reprimanded.

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THE PRESIDENT: Very well. Can we go on to Ten?

DR. HORN: My witness is Dahlerus. The submission of him was discussed at length, and I should like to know whether further discussion of the relevan of submitting this witness is necessary.

SIR DAVID MAXWELL FYFE: I have already put my general position with regard to Dahlerus. Apparently this defendant wants him on one particular point namely, an order from Hitler, and I submit that the appropriate way would be i Dr. Horn added an interrogatory on that point.

Prima Facie, it seems highly improbable that Hitler communicated his private order to a Swedish engineer, but in view of the fact that interrogatories have been ordered, I suggest that Dr. Horn can send a further interrogatory on that point.

DR. HORN: Mr. President, may I remark in this connection that it is not a question here of a command of Hitler, but a question of the decisive note that was the beginning of the second world war.

SIR DAVID MAXWELL FYFE: My position goes into a great deal of these requests. This is only evidence if Herr Dahlerus can say what Hitler said, what Hitler told him. It isn't evidence if Herr Dahlerus can say, "Herr Ribbentrop told me that Hitler had so ordered." That does not add to the evidence of the defendant himself. Therefore, I think it is essential that before one can judge of the evidential value at all, that the matter should be submitted, as I suggest, by way of interrogatory.

THE PRESIDENT: Dr. Horn, unless you have anything further to add with reference to this witness, we will stop at this point, because we think it is impossible to go further today, and apparently it is impossible to finish the whole of your applications this afternoon, so do you wish to add anything more about Dahlerus?

DR. HORN: Yes, I should like to make a short statement in answer to what Sir David says is evidential. This witness will not say what he heard from Ribbentrop; he will testify to what he heard about Ribbentrop from the decisive personality, namely, Hitler himself.

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SIR DAVID MAXWELL-FYFE: A general point, My Lord: In the case of the witnesses who are asked for by Dr. Horn, I had prepared the comments of the Prosecution, and they have been typed out in English. The Tribunal will realize that we only received this application yesterday, and it had to be translated. I haven't been able to get it translated, but I have given Dr. Horn a copy quite informally so that he would be informed, and it might be useful if I handed it in because it might shorten the proceedings and also act as a record when the Tribunal resumes the consideration.

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of these points. I do not know if that appeals to the Tribunal.

THE PRESIDENT: Yes, very well. Then we will adjourn now.

I want to ask the Russian Chief Prosecutor whether it would be convenient to the Soviet Prosecutors that we should continue on Monday morning with this examination of witnesses and evidence. I think it will probably take the whole of the morning if we deal with the defendant Ribbentrop's applications and then the defendant Keitel's, so that the Soviet Prosecution, if that course were adopted, would come on at two o'clock. Would that be convenient for them?

GENERAL RUDENKO: It will be quite convenient for us as well.

THE PRESIDENT: There is just one other point I should like to ask you. I think the Tribunal were notified that there were two witnesses the Soviet proposed to call. I think that we said that General Warlimont and I think General Haldar ought to be called so as to give the Defense Counsel an opportunity of cross examining them.

GENERAL RUDENKI: If it will be convenient for the President, I shall report on this question. I became acquainted with the transcript about the time when General Pokrovsky and General Smirnov were doing the presentation.

The Soviet Prosecution considers that there is no foundation to object to General Warlimont and Haldar, who were cross examined in the Court by the Defense Counsel, but the Soviet Prosecution is not going to admit those people as witnesses on behalf of the Soviet Prosecution.

I would like once again to report about the plans that the Soviet Prosecution has in mind in regard to concluding its presentation of evidence. We have a plan to present to the Tribunal the last section, and that is Crimes against Humanity. The presentation of this question will take approximately three to four hours.

In addition, we shall ask the Tribunal to permit us to examine individual Soviet citizens who are specially brought into Nurnberg and who are in Nurnberg now. In such a way we consider that we shall, if we start our presentation beginning at two o'clock, then on Tuesday we will finish our presentation on all counts.

THE PRESIDENT: The Tribunal will expect to have General Warlimont and Halder present here before the Soviet case finishes, not for the Soviet Prosecution to ask them questions but for them to be cross-examined by the

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defense counsel if they want to, but that may take place at any time that is convenient to you. If you wish, they could be called at two o'clock on Monday; if you prefer, at the end of the Soviet presentation, either on Tuesday afternoon or on Wednesday morning, whichever is convenient to you.

GENERAL RUDENKO: Mr. President, as I already mentioned, the Soviet Prosecution did not propose to call either Halder or Warlimont. The Soviet Prosecution did not object if the defense counsel proposes to cross-examine Halder and Warlimont. As far as I know, as far back as last December the Tribunal granted the defense application to call Halder as a witness on behalf of the defense. Wherefore it seems to me, and in order to expedite the presentation of the Soviet evidence, this really will not effect the presentation, that I wish the examination of Warlimont and Halder were done during the presentation of evidence on the part of the defense counsel.

One moment, if I may. Inasmuch as I know that in the application on behalf of the defendant Keitel, which was presented to the Tribunal, Halder and Warlimont are indicated as witnesses, and the defendant Keitel and his attorney were making a motion to call them as witnesses; on the basis of this, I consider that the examination of this witness should be done during the presentation of evidence by the defense counsel.

THE PRESIDENT: The Tribunal understands that both General Warlimont and General Halder are here in Nurnberg. Is that so?

GENERAL RUDENKO: Yes.

THE PRESIDENT: Probably the most convenient course would be for the Tribunal to see exactly what order the Tribunal made with reference to their being called. We will look up the shorthand notes and see exactly what order we made and deal with the matter on Monday morning. Then, in the meantime, on Monday morning we will continue, as you said is convenient to you, the applications by Dr. Horn for the defendant Ribbentrop and the applications by Dr. Nelte on behalf of the defendant Keitel, and we shall sit from two until four o'clock only on Monday afternoon.

(The Tribunal adjourned until 25 February 1946, at 1000 hours.)